IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21450 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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JAGDISH KALUBHAI BHAVSAR - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MS KRISHNA U MISHRA for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 07/12/2005

ORAL JUDGMENT

1.Jagdish Kalubhai Bhavsar, petitioner (original detenu) has filed this habeas corpus petition under Article 226

of the Constitution of India for quashing and setting aside the order of detention dated 20/9/2005 passed by the Police Commissioner, Ahmedabad under the provisions of PASA Act. Petition was filed on 14/10/2005. On 24/10/2005, this Court (Coram:A.S.Dave, J) has issued rule which is returnable after four weeks. Hence, matter has been placed for hearing to this Court.

2.Ms.Banna Dutta, learned counsel on behalf of Ms.K.U.Mishra,learned advocate appears for the petitioner. She has invited my attention to the order of detention dated 20/9/1005. She has stated that detenu has been detained on 20/9/2005. She has also invited my attention to the grounds supplied by the authority on 20/9/2005. In the grounds of detention, it is stated that detenu has committed one offence which is registered at Amaraivadi Police Station in connection with Criminal Case No.5383 of 2005 dated 19/9/2005 under the provisions of Section 66(B), 65(E) and 81 of the Bombay Prohibition Act by which the detenu has stored 753 liter country liquor and Maruti fronte valued at Rs.50,000/-

3.The learned counsel for the petitioner submitted that

it was also stated that petitioner was falling within the meaning of 'bootlegger' under the provisions of PASA Act as carrying on antisocial activities as carrying on business of liquor and and therefore, there is a breach of public order.

4.The learned counsel for the petitioner stated that even if all the allegations taken, then the detenu will not fall within the meaning of 'bootlegger'. There can be breach of law and order situation but not public order. For the same, the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of Piyush Kantilal Mehta, judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000 and division bench judgment of this Court (Coram:C.K.Thakkar, Acting C.J. and K.M.MEHTA, J.) in the case of Ashokbhai Jivrajbhai v. Police Commissioner, reported in 2000 (1) GLR 816, particularly para 21.

5.On behalf of respondent, Mr.L.R.Pujari, learned APP appears. He has tried to support the order of detention on the basis of grounds stated in the order

of detention.

6. Having heard the learned counsel for both the parties, in my considered view, the detaining authority has passed the order of detention without there being any credible and cogent material in this behalf. Contentions of the petitioner are squarely covered by the decisions of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and Division Bench Judgment of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in the case of Ashokbhai Balabhai Makwana and another division bench judgment of this Court (C.K.Thakkar and K.M.Mehta, J.J.) in the case of Ashokbhai Jivrajbhai (supra). And therefore, the order of detention is required to be quashed and set aside.

7. Having heard the rival submissions of the parties and perused the records of the case, I am of the view that only registration of criminal case under the Prohibition Act alone cannot be said to be sufficient enough to arrive at the subjective satisfaction to the effect that the activities of the detenu are prejudicial to the public order. The power to detain a person under the PASA Act is not based on simple facts

about registration of crimes under the Prohibition Act. There has to be nexus and link for such activities which disturb the public order. The activities of the detenu must in the backdrop of the facts, reflect that such activities disturbed the even tempo or normal life of the community in the locality or disturbed general peace and tranquility or create a sense of alarm and insecurity in the locality. On careful perusal of the grounds of detention order and relying upon the judgment of the Supreme Court in Piyush Kantilal Mehta (supra), judgment and order dated 22/8/2000 of the Division Bench of this Court (Coram:M.R.Calla and R.R.Tripathi, J.J.) in L.P.A. No.223 of 2000 in S.C.A. No.554 of 2000, Division Bench judgment of this Court in the case of Ashokbhai Jivrajbhai (supra) and Special Civil Application No.20420 of 2005 decided by this Court (Coram:K.M.Mehta, J.) on 15/11/2005, in my view, it cannot be said that the activities of the detenu are prejudicial to the public order. Therefore, the order of detention passed by the detaining authority cannot be sustained and is required to be quashed and set aside.

8.I have considered the facts and circumstances of the

case in view of the submissions made by the learned counsel for the petitioner, judgment of the Hon'ble Apex Court in the case of Piyush Kantilal Mehta (supra) and judgment in Letters Patent Appeal (supra) and other judgment cited by the petitioner. Considering all these, I am of the view that the activities of the petitioner may affect law and order situation and not affect the public order and therefore, subjective satisfaction arrived at by the authority is not legal and valid. Therefore, the order of detention passed by the authority is required to be quashed and set aside.

9. In the result, I am of the view that the order of detention cannot be sustained by law. I hereby quash and set aside the order of detention. Petition is allowed. Jagdish Kalubhai Bhavasar, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

(K.M.MEHTA, J.)

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